


TOWN OF ACTON
Building Department
INTERDEPARTMENTAL COMMUNICATION

SB
5/10/04 (7)

To: Board of Selectmen **Date:** May 5, 2004
From: Garry A. Rhodes, Building Commissioner 
Subject: Special Permit #09/06/02-384 (Ashton)
272 Great Road

Ms. Kaiser and Ms. Keaney are requesting permission to increase the number of dogs from 25 to 35. The Decision (attached) provides for the increase of the number of dogs kept to 35 if several conditions are met.

The Decision provides that any request to increase the number of dogs cannot be done for a period of six months after opening. It is my understanding the dog daycare opened in the summer of 2003. The Decision also requires the Petitioner provide documentation that the parking is not an issue. I have observed the property on a number of occasions. I have not observed any problems nor have I received any complaints. In addition, they have indicated employees have the ability to park at Siesta Sleepwork's.

Since they opened I have received one noise complaint. They appear to have resolved the issue. I have attached the complaint and response.

COUNTRY CANINE



Dog Daycare

April 22, 2004

Gary Rhodes
Building Commissioner
Acton Town Hall
472 Main St.
Acton, MA 01720

Dear Gary,

In accordance with our Special Use permit #09/06/02-384, Country Canine Dog Daycare has been limiting its daily capacity to 25 dogs. Since the start of the year, we have been filling our capacity two to four days per week, and turning potential clients away.

At this time, we would like to formally request an increased capacity to accommodate 35 dogs daily. To ensure that noise levels do not rise with a larger number of dogs, we have already employed additional staff to supervise dogs when outside to keep noise levels down. We would also entirely enclose our yards and buy additional bark collars.

If permission is granted from the town to increase our capacity, we would maintain our routine of rotating dogs inside to minimize the number that are out at a given time.

Because our client's drop-offs take approximately one minute in the morning, and pick-up's take approximately five minutes in the evening, we have not found parking to be an issue. If parking did seem to become congested with our increased capacity, Siesta Sleepwork's has offered for our employees to park further down the driveway by their dumpsters.

Please advise us of your decision.

Sincerely,

A handwritten signature in cursive script that reads "Alison Kaiser".

Alison Kaiser

A handwritten signature in cursive script that reads "M. Keaney".

Megan Keaney



TOWN OF ACTON
472 Main Street
Acton, Massachusetts, 01720
Telephone (978) 264-9632
Fax (978) 264-9630

Building Department

March 2, 2004

Drs. Deborah and Barry Diamond D.C.
Network Chiropractic of Acton
274 Great Road Suite 2B
Acton, MA 01720

Re; noise complaint

Dear Drs. Deborah and Barry Diamond D.C.,

By letter dated February 9, 2004, you filed a complaint about the Country Canine Dog Daycare. I forwarded your complaint to Canine Dog Daycare to provide them an opportunity to address the noise issues you raised. I have attached a copy of their response to your complaint.

They have taken steps to rectify the problem. Please let me know if the problem continues.

Sincerely,

Garry A. Rhodes
Building Commissioner

Cc. Country Canine Dog Daycare



NETWORK CHIROPRACTIC OF ACTON

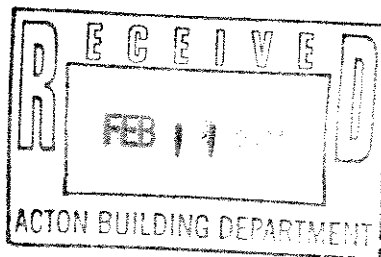
♡ The Light Touch ♡

Dr. Barry Diamond D.C.
Dr. Deborah Diamond D.C.

274 Great Road, Suite 2B
Acton, MA 01720
Phone 978-263-5182
Fax 978-263-5183

February 9, 2004

Acton Building Department
Building Commissioner
Gary Rhodes



Dear Gary,

This is a letter of complaint regarding the Country Canine Kennel at 272 Great Road in Acton. We opened our Chiropractic Office in May of 2003 unaware that a Kennel was planning to open next door with its outdoor yard across the driveway from our office. The technique we practice involves the patients lying on the adjusting table for up to 15 minutes and going into a deeply relaxed state.

After the Kennel opened we began to hear dogs barking during our treatment hours. It was distracting to us as practitioners and disturbing to a number of our patients who complained to us about it. One patient in fact without our knowledge went over to the kennel and complained directly to them and others offered to go there and talk to the owners to help us.

I spoke to the owners on numerous occasions explaining our concerns to them. They appeared to be responsive and explained to me how they use citronella collars to help control the barking and told us they would try to be especially alert to it during our treatment hours, but that after all "they were dogs and dogs do bark". All said and done we find that on every occasion that we have alerted them to the constant barking which can be intermittent constant barking from a few minutes to hours at a time like this morning, they can't seem to control the problem.

I think we have been very patient and the barking was less but noticeable during the coldest part of the winter when we had our windows closed and the dogs were probably not outdoors as much. Now that the weather is beginning to warm slightly we have noticed that the barking is getting louder and more continuous again and are concerned that it will continue to negatively impact on our practice. We invested a large amount of money building out this office and signed a ten-year lease, and although we do not wish to complain about the owners of the Kennel, we are forced to take this position for our own peace of mind and that of our clients.

We have come to find that direct polite communication with the owners is ineffective and therefore appreciate your involvement and help in this matter.

Thank you very much,

Dr. Deborah Diamond D.C.

Drs. Deborah and Barry Diamond D.C.s

Barry Diamond



TOWN OF ACTON
472 Main Street
Acton, Massachusetts, 01720
Telephone (978) 264-9632
Fax (978) 264-9630

Building Department

February 13, 2004

Megan Keaney/Alison Kaiser
Country Canine Dog Daycare
272 Great Road
Acton, MA 01720

Re; Noise complaint

Dear Ms. Keaney & Ms. Kaiser,

I have received a noise complaint (attached) from Network Chiropractic of Acton concerning your operation. I am notifying you about this complaint as provided by the Special Permit (attached) issued to you from the Board of Selectmen. You indicated at the hearing you would be using "citronella bark collars" to control the noise. I am not sure if you are using the collars or if they are ineffective. Please let me know how you will be resolving the noise complaint. This complaint must be addressed immediately, as provided by the decision.

Sincerely,

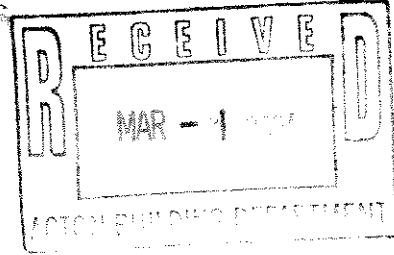

Garry A. Rhodes
Building Commissioner

Cc. Board of Selectmen
Network Chiropractic of Acton

COUNTRY CANINE



Dog Daycare



February 27, 2004

Acton Building Department
Gary Rhodes
Building Commissioner

This letter is in response to the noise complaint filed by the Network Chiropractic of Acton dated Feb. 9th, 2004.

As discussed below, we are operating in accordance with the terms of the Special Use Permit #09/06/02-384 and we are using Citronella Bark collars to help control noise.

To assist you in your review of this complaint, we want to provide an update on our business practices, the specific accommodations that we have made for Network Chiropractic, the general noise level of the area, the perspective of our other business neighbors, as well as what we see as unrealistic expectations of Network Chiropractic for utmost quiet in a commercial business zone.

1. Our Business Practices

To control barking, we use Citronella Bark Collars, as well as using water spray bottles, and other techniques to control the dogs. We also refuse to accept dogs which make excessive noise.

For example, one aspect of our business is having new dogs come for a trial day. It is difficult for us to predict what the noise level will be from a new dog once they get here. On the day the complaint was filed, it should be noted that we had a new dog that did bark. When we could not control the dog's noise, we called the owner and ask them to pick up the dog promptly.

2. Specific Changes to Accommodate Network Chiropractic

We have had several discussions with the chiropractic office. They informed us that there were several hours where they needed the utmost quiet for their clients. Those

hours are as follows: Monday, Wednesday, Thursday, 9:00am to 12:00pm, and 3:00pm to 7:00pm. As soon as we were aware of these hours, we made every accommodation possible to appease their requests for quiet.

Specifically, to control noise, we:

- Hired a third yard supervisor for the mornings that Network sees clients
- Shifted our lunch naptime to accommodate Network's hours
- Rotated dogs in more frequently during Network's business hours
- Further enclosed our play yard to avoid dogs barking at people on the driveways surrounding our yard
- Have permanently dismissed over 20 paying clients whose dog's were excessive barkers

Since receiving the letter on Feb 17, we have made the following adjustments to our business structure. As soon as dogs arrive in the morning, around 7:00 am, we take them outside to get maximum playtime in before the Network Chiropractic sees patients at 9:00 am. By doing this, we are able to rotate dogs inside more frequently through out the day. We have also adjusted our mid day nap time by a half hour, so that the dogs go inside while Network is still seeing clients and thus can come back outside earlier, before the Network Chiropractic's client hours begin again.

3. Other neighboring businesses

We have discussed the noise issue with other neighboring businesses (including Great Road Veterinary Hospital, Siesta Sleepworks, The Indian Market, Michael's Shoes and Frameworks). We approached them to ask if the noise levels were bothersome to their businesses. ALL of these businesses indicated that they had absolutely no problem with us, and that in fact they rarely heard our dogs given the general noise level.

4. General Noise Level of the Area

This is a noisy area. On our shared driveway there are many truck deliveries to Siesta Sleepworks and the Great Road Veterinary Hospital that produce a great amount of noise. In addition, the several weekly trash pick-ups from BFI are also a disturbance. The Children's daycare center behind the Chiropractic office, the chiropractic office itself, and the other three businesses on our driveway also create a high amount of traffic throughout the day.

Also next to our yard, there are many more truck deliveries to the Gould's Plaza and a day never passes without several ambulance and police sirens passing. We have recently noticed an air traffic pattern that flies directly over our property. These noise disturbances do not even factor in the high volume of traffic along Route 2A, the veterinary hospital clientele, car alarms and construction that can take place at any time during the week. We believe that this location is anything but serene, which is specifically why after 10 years of searching, we chose this location.

In conclusion, we feel that we are operating in full compliance with the Special Permit. Network Chiropractic is being unrealistic to expect utmost quiet in a commercially zoned area. Further, their complaint that the noise from our dogs is interfering with their business is not credible given the overall noise of the area. In fact, according to an acquaintance of ours who is a client of Network Chiropractic, she never hears the dogs when she is getting adjusted; she "only ever hears the delivery trucks backing up."

Please let us know if you would like any of these statements in writing, as we would be more than obliged to obtain them.

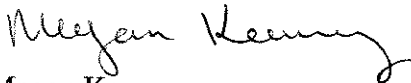
In addition, please note that Network Chiropractic has a practice of leaving its windows open. When their windows are closed in winter, they hear less noise. In their letter, they assumed incorrectly that the dogs were in more due to the cold temps. To reduce noise, Network Chiropractic could close their windows in the warmer weather and use air conditioning.

Thank you for your consideration. Based on this information, we trust that you will find our business to be operating in full compliance with the Special Permit.

Sincerely,



Alison Kaiser



Megan Keaney

Cc: Network Chiropractic of Acton
Jean Sifleet, Esq.
Dr. Kelman, Great Rd. Vet. Hosp.

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DECISION of the Board of Selectmen (hereinafter the Board) on the petition of Alison Kaiser and Megan Keaney (hereinafter the Petitioner) for the property located at 272 Great Road Acton, Massachusetts. Said property is shown on Acton Town Atlas Map E-5 Parcel 11 and Map E-4 parcel 15-2.

This Decision is in response to an application submitted to the Board on September 6, 2002 by the Petitioner for a Special Permit under Section 10.3 of the Acton Zoning Bylaw (hereinafter the Bylaw), to establish a Canine Care Service/Boarding.

After causing notice of the time and place of the public hearing and of the subject matter thereof to be published, posted and mailed to the Petitioner, abutters and other parties in interest as required by law, the hearing was called to order on November 04, 2002 at 7:10 P.M. in the Selectmen's Hearing Room at the Acton Town Hall. Board members, William Shupert III, Pamela Harting-Barrat, F. Dore' Hunter, Walter Foster, and Peter Ashton were present throughout the proceedings.

The record of the proceedings and submissions upon which this permit is based may be referred to in the Office of the Town Clerk, or the Office of the Board.

Submitted for the Board's deliberation prior to the close of the hearing were the following exhibits:

Exhibit I

A properly executed application for Special Use Permit received September 06, 2002.

Exhibit II

Interdepartmental Communication (IDC) from the Town Manager to the Town Staff requesting comments. The following IDC's were received:

1. Building Commissioner dated October 28, 2002
2. Town Planner dated September 19, 2002
3. Engineering Administrator dated October 9, 2002

1.0 Findings and Conclusions

Based upon its review of the exhibits and records of the proceedings, the Board found and concluded that:

- 1.1 The site is located in the Limited Business Zoning District and the Canine Care/Boarding is permitted by Special Use Permit.
- 1.2 The site is located in Zone 2 of the Groundwater Protection District.
- 1.3 This site is the subject of a Board of Appeals Special Permit # 80-47 and Board of Selectmen Site Plan Special Permit # 198 for a Veterinary Hospital. This decision will supercede both Permits.
- 1.4 There are nine parking spaces on site, which comply with the number of spaces required by the Bylaw. The existing Veterinary Hospital will occupy the first floor and the canine care service will occupy the basement. The Board is concerned the existing number of parking spaces may not be

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sufficient for both businesses. The Board has the right to require additional parking under Bylaw section 10.4.4.3. The Board finds by limiting the canine care to 25 dogs initially with a possible increase to the requested 35 dogs will allow time to determine if the nine spaces are sufficient.

- 1.5 The Petitioner is proposing a 6,000 square foot enclosed outdoor exercise area. The Board is concerned about noise. The petitioner will be limiting the business to the hours of 7:00 AM to 7:00 PM Monday through Friday. They will be using citronella bark collars to control noise. They are also proposing to enclose the exercise area on all sides open to public view with a stockade fence.
- 1.4 The Plan as herein approved:
 1. Will protect the neighborhood and the Town against seriously detrimental or offensive USES on the site and against adverse effects on the natural environment.
 2. Will provide for convenient and safe vehicular and pedestrian movement and the locations of driveway openings are convenient and safe in relation to vehicular and pedestrian traffic circulation, including emergency vehicles, on or adjoining the site.
 3. Will provide an adequate arrangement of parking and loading spaces in relation to the proposed USES of the premises.
 4. Will provide adequate methods of disposal of refuse or other wastes resulting from the USES permitted on the site.
 5. Is consistent with the Master Plan.
 6. Is in harmony with the purpose and intent of this Bylaw.
 7. Will not be detrimental or injurious to the neighborhood in which it is to take place.
 8. Is appropriate for the site and complies with all applicable requirements of this Bylaw.

Therefore, the Board voted to **GRANT** the requested Special Permit subject to the following conditions and limitations.

2.0 **Conditions**

- 2.1 The canine care business shall be limited to the hours of 7:00 AM to 7:00 PM Monday through Friday.
- 2.2 A stockade fence shall enclose the outdoor exercise area where it is open to public view.
- 2.3 The Petitioner and Veterinary Hospital shall be responsible to keep noise to the lowest levels possible. Any complaints concerning either parking or noise shall be directed to the Building Commissioner in writing. The Building Commissioner shall notify the Petitioner and Veterinary Hospital of such complaint and they shall immediately address the problem.
- 2.4 This permit shall lapse in 6 months from the issuance of the permit,
 - a. The Building Commissioner has received a written complaint that the Petitioner or Veterinary Hospital has not been resolved to the satisfaction of the Building Commissioner. The petitioner or Veterinary Hospital may request a hearing with the Board if aggrieved by the decision of the Building Commissioner.If the Permit does not lapse as provided above, it shall only be revoked for cause after a public hearing before the Board.

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- 2.5 The Petitioner shall dispose of the waste to the satisfaction of the Board of Health.
- 2.6 The Petitioner is limited to 25 dogs. The Petitioner may request an increase to 35 dogs but not before six months after opening. The request shall include documentation that parking is not an issue. If parking is an issue, the Board may require additional parking.
- 2.7 The Veterinary Hospital shall not have any animals on exterior runs between the hours of 7:00 PM and 7:00 AM or on weekends.

3.0 Limitations

The Authority granted to the Petitioner by this permit is limited as follows:

- 3.1 This permit applies only to the site, which is the subject of this petition. All construction shall be conducted in accordance with the terms of this permit and shall be limited to the improvements shown on the Plan.
- 3.2 This Decision applies only to the requested Special Permit. Other permits or approvals required by the Acton Zoning Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Decision. No approval of any signs or advertising devices is implied by this Decision.
- 3.3 The foregoing restrictions are stated for the purpose of emphasizing their importance but are not intended to be all inclusive or to negate the remainder of the Acton Zoning Bylaw.
- 3.4 This Special Permit shall lapse on November 18, 2004 unless work approved by this permit has commenced except for good cause. This Special Permit shall also lapse as provided in condition 2.4. Any request for extensions shall be made at least thirty (30) days prior to expiration.

4.0 Appeals

Any person aggrieved by this Decision may appeal pursuant to the General Laws, Chapter 40A, Section 17 within 20 days after the filing of this Decision with the Acton Town Clerk.

Witness our hand this day of , 2002

William Shupert III, Chairman

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I, Christine Joyce, hereby certify that this is a true copy of the Decision of the Board of Selectmen.

Christine Joyce, Recording Secretary

Date filed with Town Clerk

Edward Ellis, Town Clerk

TO WHOM IT MAY CONCERN: This is to certify that the 20 day appeal period on the Decision of Alison Kaiser and Megan Keaney passed and there have been no appeals made to this office.

Date

Edward Ellis, Town Clerk

cc: Petitioner
Building Commissioner, Planning Board, Engineering, Conservation, Director of Municipal Properties,
Board of Health, Town Clerk
Planning Boards - Concord, Littleton, Westford, Maynard, Carlisle, Boxboro, Stow, Sudbury